

EXHIBIT F

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
07 CIV. 9385 (JFK)

-----x

SAMSARA INVESTMENT III, LLC,

Plaintiff,

vs.

JERRY L. WALLACE,

Defendant.

-----x

May 12, 2008

8:20 a.m.

Deposition of Jerry L. Wallace,
held at the offices of Haynes & Boone, LLP,
153 East 53rd Street, New York, New York,
pursuant to Court Order, before Francine
Sky, a Notary Public of the State of New
York.

1 Jerry L. Wallace

2 as Managing Member, that you just sat back
3 there and did nothing?

4 A. Nobody else was doing anything. I
5 had no choice.

6 Q. So you continued to act as Managing
7 Member?

8 A. I had no choice.

9 Q. The answer to my question is you
10 continued to act as Managing Member; correct?

11 A. Yes.

12 Q. And you did that on your own;
13 correct?

14 A. Yes.

15 Q. You're still acting, to the extent
16 you can, as Managing Member of Shores of
17 Paradise; correct?

18 A. Yes. A-ha.

19 Q. That continues today? If somebody
20 says, Who is the Managing Member, you are the
21 Managing Member, today?

22 A. No, sir.

23 Q. You are acting as Managing Member
24 today, sir, aren't you?

25 A. I'm not acting as Managing Member.

1 Jerry L. Wallace

2 There's no activity and I have no authority to
3 do that other than to protect myself.

4 Q. Which you continue to do?

5 A. I have to protect myself. They're
6 not doing anything.

7 Q. Directing your attention to the
8 second Counterclaim, it says -- Paragraph 26:
9 "Plaintiff" -- that is Samsara -- "failed to
10 discharge its duties as a manager in good
11 faith."

12 Do you see that?

13 A. A-ha.

14 Q. What is the basis for that
15 allegation?

16 A. When you have a contract with
17 somebody, you have to perform on that
18 contract. And their own contract that they
19 wrote and submitted to me to sign stated that
20 in the event that I defaulted they would come
21 in and take this over and handle it.

22 So they didn't act in good faith
23 because they didn't do that.

24 Q. You're saying the basis of that
25 allegation is that they failed to come in and

1 Jerry L. Wallace

2 take over the project?

3 A. Yes.

4 Q. Mr. Wallace, didn't you ask to
5 continue to be in charge of that project?

6 A. I didn't ask to do anything.
7 Because I was out of money. I couldn't ask
8 anybody to do anything.

9 Q. You couldn't ask anybody to do
10 anything.

11 So you couldn't ask Samsara to come
12 in as Managing Member?

13 A. I mean, they already were the
14 Managing Member as far as the contract goes.

15 Q. But in terms of what was happening,
16 Mr. Wallace, you were continuing to act as
17 Managing Member; correct?

18 A. Say that again.

19 (The record was read.)

20 A. Yes.

21 Q. And with respect to your calls to
22 Mr. Shah, who is residing in India at the
23 time, you were calling him to request money;
24 correct?

25 A. That's correct.

1 Jerry L. Wallace

2 Q. That was the purpose of the call?

3 A. That was the purpose, yes.

4 Q. Were there any other purposes of
5 the call that you know of?

6 A. At that time, the note was due.
7 That was why I called.

8 Q. Aside from calling Mr. Shah to get
9 more money, was there any other purpose to
10 your calls to Mr. Shah that you know of as you
11 sit here today?

12 A. No.

13 Q. With respect to the third
14 Counterclaim: "Plaintiff failed to discharge
15 its duty as a manager," reading from Paragraph
16 30, "with the care an ordinarily prudent
17 person in a like position would exercise under
18 similar circumstances."

19 Is the basis for that claim the
20 same basis you testified to as to Counterclaim
21 No. 2?

22 A. Counterclaim No. 2?

23 Q. Let me rephrase.

24 What is the basis of your third
25 Counterclaim?

1 Jerry L. Wallace

2 A. The same one that I've just given
3 about not coming in and managing the project
4 and taking care of the debts.

5 Q. Samsara, though, had no obligation
6 to continue funding the project, did it? It
7 had no written obligation to give you more
8 than the \$6 million it initially invested, did
9 it?

10 A. No. But they had -- I say no,
11 because, I mean, I've got to reread the
12 contract before I absolutely say, No, I don't
13 think so.

14 Q. Do you have any written agreement
15 with Samsara beyond the initial Investment
16 Agreement for \$6 million?

17 A. No others, no.

18 Q. So they were obligated to give the
19 first \$6 million; correct?

20 A. That's correct.

21 Q. And with respect to the fourth
22 Counterclaim, what's the basis of that
23 Counterclaim?

24 A. I guess that's the same as what
25 we've just talked about.

1 Jerry L. Wallace

2 Q. Mr. Wallace, we spoke a few moments
3 ago about the closing on the Samsara
4 transaction, that is, the signing of the
5 Guaranty, the Investment Agreement and the
6 Amended Operating Agreement for Shores of
7 Paradise, LLC.

8 You testified that at that time
9 your counsel from Greenberg Traurig had
10 reviewed it and indicated it was okay for you
11 to sign; correct?

12 A. Yes.

13 Q. You received that counseling prior
14 to signing; correct?

15 A. Not during the signing and not on
16 the day that I signed.

17 Q. Prior to signing it?

18 A. Prior to the signing.

19 Q. And do you recall being represented
20 by Jeff Hall at that closing?

21 A. He didn't represent anyone. Jeff
22 Hall -- he was not representing me. He was
23 representing -- he was just the closing agent.

24 Q. Who was paying for the closing
25 agent?

1 Jerry L. Wallace

2 Q. I want to direct your attention to
3 the bottom where the attachments are
4 indicated. Shores of Paradise, Amended and
5 Restated Operating Agreement, Version 7;
6 Shores of Paradise Guaranty of Jerry Wallace,
7 Version 4; Shores of Paradise Investment
8 Agreement, Version 6.

9 Do you see that?

10 A. Yes.

11 Q. Did you, in fact, under cover of
12 this e-mail, receive copies of those three
13 documents, the Amended and Restated Operating
14 Agreement, the Guaranty that you signed and
15 the Investment Agreement from Samsara?

16 A. Yes.

17 Q. Did you call with any questions
18 upon reviewing these documents?

19 A. No.

20 Q. Did you have any questions upon
21 reviewing these documents?

22 A. No. No. I was depending on Edward
23 Heath.

24 Q. You received them, you reviewed
25 them, and had no questions; correct?

1 Jerry L. Wallace

2 A. No. I'm only assuming I received
3 them.

4 Q. You have no reason to believe you
5 didn't receive them?

6 A. I have no reason.

7 Q. Just so we have a clear record,
8 looking at Exhibit 13, as you sit here today,
9 you received each of the three documents, the
10 Amended and Restated Operating Agreement, the
11 Guaranty of Jerry Wallace and the Shores of
12 Paradise Investment Agreement, you reviewed
13 those documents and you had no questions for
14 your counsel after reviewing them; correct?

15 A. No. I haven't -- had none, no.

16 Q. That's correct, in answer to my
17 question?

18 A. Correct. Correct.

19 Q. At some point after you received
20 the three documents pertaining to the Shores
21 of Paradise transaction, and reviewed them,
22 you went to close on the deal; correct?

23 A. Yes.

24 Q. It was that day, February 23, 2006?

25 A. I don't know what day we closed.

1 Jerry L. Wallace

2 (Plaintiff's Exhibit 14, E-mail

3 from Jason Simon to Jeff Dinerstein at
4 Haynes & Boone with a cc to Edward Heath,
5 Alan Sheppard, and Bruce Merwin, marked for
6 identification.)

7 Q. I direct your attention to Exhibit
8 14. That's an e-mail, again, from Jason
9 Simon, and that's to Jeff Dinerstein, I will
10 represent that's Samsara's counsel at Haynes &
11 Boone, with a cc to Edward Heath, Alan
12 Sheppard, and Bruce Merwin. It says "executed
13 investment documents."

14 It says: "Attached are copies of
15 the investment documents executed by Jerry
16 Wallace. As discussed, the Investment
17 Agreement is to be held in escrow pending our
18 receipt of a copy signed by Samsara, and the
19 Amended and Restated Operating Agreement and
20 Guaranty are to be held in escrow pending our
21 confirmation of release, upon the occurrence
22 of the applicable triggering events set forth
23 in the Investment Agreement. Let me know if
24 you have any questions. Best regards, Jason."

25 So does this refresh your

1 Jerry L. Wallace

2 recollection, understanding you're not copied
3 on this, that at some point after you received
4 and reviewed the three documents you attended
5 a closing and signed the documents?

6 A. Yes.

7 Q. Do you recall if you had any
8 questions about the documents at the closing?

9 A. No.

10 MR. PRESSMENT: Exhibit 15.

11 (Plaintiff's Exhibit 15, Document
12 Bates stamped 208 through D 237, marked for
13 identification.)

14 Q. This is the Amended and Restated
15 Operating Agreement of Shores of Paradise,
16 LLC. It's Bates marked 208 through D 237.

17 You can review the whole thing if
18 you would like. My question is very limited.

19 A. No. Go ahead.

20 Q. Excuse me?

21 A. I've already reviewed it. Go
22 ahead.

23 Q. Directing your attention to Page
24 23, that is your signature; correct?

25 A. Yes.

1 Jerry L. Wallace

2 Q. You signed this document; correct?

3 A. Yes.

4 Q. And you received counsel regarding
5 this document prior to signing this; correct?

6 A. I believe I did.

7 Q. And you reviewed this document
8 prior to signing it; correct?

9 A. I think I did.

10 Q. You understood this document prior
11 to signing it?

12 A. Yes.

13 Q. You didn't have any questions about
14 this document prior to signing it; correct?

15 A. Correct.

16 Q. You agreed to be bound by the
17 contents of this document; correct?

18 A. Yes, that's correct.

19 Q. I want to direct your attention to
20 Exhibit 16.

21 (Plaintiff's Exhibit 16, Copy of
22 the Investment Agreement, marked for
23 identification.)

24 Q. Exhibit 16 is a copy of the
25 Investment Agreement and the Bates mark has

1 Jerry L. Wallace

2 been cut off. I will represent to you it's
3 been produced by both parties in this case and
4 was attached to the Complaint in this case.

5 I want to direct your attention to
6 Page 11 of the Investment Agreement. That is
7 your signature; correct?

8 A. Yes.

9 Q. It appears twice there?

10 A. Yes.

11 Q. Once as the President of Shores of
12 Paradise, LLC; correct?

13 A. Yes.

14 Q. And once in your individual
15 capacity; correct?

16 A. Yes.

17 Q. And you signed those?

18 A. Yes.

19 Q. And you reviewed this document
20 prior to signing them, didn't you?

21 A. Yes.

22 Q. You had legal counsel prior to
23 signing this document, didn't you?

24 A. Yes.

25 Q. You understood this document prior

1 Jerry L. Wallace

2 to signing it; correct?

3 A. Yes.

4 Q. You had no questions about this
5 agreement prior to signing it, did you?

6 A. Not that I recall.

7 Q. You understood and agreed to be
8 bound by the terms of this agreement when you
9 signed it; correct?

10 A. Yes.

11 (Plaintiff's Exhibit 17, Principal
12 Guaranty, marked for identification.)

13 Q. Exhibit 17, this is a multi-page
14 document. Again, I will represent it's been
15 produced by both parties in this case. It is
16 a copy of a document called Principal
17 Guaranty.

18 That is a copy of the Guaranty in
19 this case; correct?

20 A. Yes.

21 Q. And I want to turn to Page 13.
22 That is your signature; correct?

23 A. Yes.

24 Q. And you reviewed this document
25 prior to signing it; correct?

Jerry L. Wallace

A F T E R N O O N S E S S I O N

(Time noted: 2:08 p.m.)

J E R R Y L. W A L L A C E, resumed
and testified as follows:

EXAMINATION (Cont'd.)

BY MR. PRESSMENT:

MR. PRESSMENT: Back on the
record.

Q. Mr. Wallace, we're returning from a
break. During the break did you have occasion
to review Exhibit 17, which was your Principal
Guaranty?

A. I did.

Q. Are you able to identify any
provision in the Principal Guaranty, Exhibit
17, that was not in the version sent to you by
Jason Simon under cover of Exhibit 13 of your
deposition here today --

A. No.

Q. -- for your execution?

A. No.

Q. So to your knowledge, the document

1 Jerry L. Wallace

2 you signed was the document that was forwarded
3 to you by counsel; correct?

4 A. Correct.

5 Q. And you signed that willingly;
6 correct?

7 A. Yes.

8 Q. And agreed to be bound by its
9 provisions; correct?

10 A. Yes.

11 Q. And following the execution of the
12 Agreement and in connection with that, Samsara
13 invested \$6 million in Shores of Paradise;
14 correct?

15 A. Correct.

16 Q. And for that investment, it was to
17 be entitled to a guaranteed return in
18 accordance with the terms of the Operating
19 Agreement; correct?

20 A. Correct.

21 Q. And you agreed to those terms;
22 correct?

23 A. Correct.

24 Q. And that is the Operating Agreement
25 that you signed and which is part of your

1 Jerry L. Wallace

2 deposition as Exhibit No. 15; correct?

3 A. Yes.

4 Q. Mr. Wallace, following the
5 execution of the Amended Operating Agreement,
6 what, if any, activities did you conduct in
7 connection with the Shores of Paradise
8 property?

9 A. We -- let me think here. We had
10 the sales there prior to Katrina.

11 Is this before or after Katrina,
12 please, somebody tell me?

13 Q. It's after.

14 A. After Katrina, okay. Actually, we
15 had to wait to find out about the market and
16 about the bank that we were going to get a
17 construction loan with. This was only a land
18 loan.

19 And we had, if I'm not mistaken, we
20 had American National Bank, I think, was the
21 construction lender, I think, and we were
22 waiting to see what was going to happen after
23 the aftermath of Katrina to determine what to
24 do. We just cannot know what to do.

25 And that took time, so there really

1 Jerry L. Wallace

2 talk about it. Let's chat next week so we
3 know what you have in mind."

4 Do you see that?

5 A. Yeah.

6 Q. Do you recall receiving that e-mail
7 from Mr. Shah?

8 A. No.

9 Q. The top e-mail of Exhibit 20 was
10 from you.

11 A. I understand, but I don't
12 remember -- I don't recollect.

13 Q. Well, let me finish my question.

14 A. Okay.

15 Q. The top e-mail, Exhibit 20, is from
16 you to Sachin Shah with a copy to Rodney Bell.
17 That's Rodney Bell's e-mail address, correct,
18 rlbell1777@yahoo.com?

19 A. Yes.

20 Q. That states, as you write: "I
21 would like to know that I would have a choice
22 at time of closing your loan that I can opt to
23 postpone the payoff until August 31, 2007, for
24 an additional \$1 million as a balloon note."

25 Do you recall writing that?

1 Jerry L. Wallace

2 A. No. No.

3 Q. Reading that, does that refresh
4 your recollection in any way that as of
5 January 4, 2007, the understanding between you
6 and Mr. Shah was that you would stay on as
7 Managing Member at least through August 31,
8 2007?

9 A. By reading this, I mean, if I were
10 able to get a yes on a one million, I would
11 have to assume so.

12 Q. But it was your desire, at least at
13 that point, as of January, to stay on as
14 Managing Member?

15 A. Yeah. I didn't want to lose my
16 project.

17 Q. For a clean record, as of
18 January 4, 2007, you expressed a desire to
19 stay on as Managing Member through August 31,
20 2007; correct?

21 A. Yes.

22 Q. Directing your attention to Exhibit
23 21.

24 (Plaintiff's Exhibit 21, Multi-page
25 document Bates stamped SAM 3674 through

1 Jerry L. Wallace

2 you want tomorrow, Tuesday, at 9 a.m., CST."

3 You go on to write some more about
4 Fountains of Laketown.

5 Do you recall writing that e-mail
6 on or about January 15th?

7 A. Yes. A-ha.

8 Q. Do you recall the group?

9 A. That's that same group.

10 Q. Do you recall writing that "I do
11 intend to develop both properties"?

12 A. Yes.

13 Q. When you said you intended to
14 develop, what did you mean by that?

15 A. I intended to go forward.

16 Q. It was your intention as of
17 January 15, 2007, to continue to manage both
18 properties, Caribbean Dream and Shores of
19 Paradise, as the developer and Managing
20 Member; correct?

21 A. That's correct.

22 Q. You had no intention at that point
23 of relinquishing the Managing Member role with
24 respect to either of those properties; right?

25 A. No. The main reason, I was making

1 Jerry L. Wallace

2 the payments, I think, at that time. So I had
3 room to move.

4 (Plaintiff's Exhibit 22, Multi-page
5 document Bates stamped SAM 3680 through SAM
6 3682, marked for identification.)

7 Q. Direct your attention to Exhibit
8 22. It's a multi-page document Bates marked
9 SAM 3680 through SAM 3682.

10 Again, it's a string of e-mails,
11 and I will tell you that the back two pages
12 are e-mails that we've already looked at.

13 So I would like to direct your
14 attention to the second e-mail which is an
15 e-mail from Sachin Shah to you, with a cc
16 Edward Heath. Subject: "Re: Conference
17 call."

18 It says: "Jerry, in preparation
19 for tomorrow's call, could I please get
20 written replies from you on the following
21 matters."

22 A. I'm trying to find you.

23 MR. SHAH: Page 1.

24 A. Okay.

25 Q. Do you see where I'm reading from?

Jerry L. Wallace

14. It says: "If and to the extent the company has not paid to the Class B member the full amount of the Class B preferred return described in Section 4.1(a) above on or before February 26, 2007, then the remaining amount of the Class B preferred payable to the Class B member as of such date shall accrue simple interest."

Do you see that?

A. Yes.

Q. As of the date you remember Exhibit 25, February 27th, Samsara's return on its investment was already due; correct?

A. Yes.

Q. And at that time you continued on as Managing Member of Shores of Paradise?

A. Yes.

Q. And you asked to restructure or delay the payment of the Samsara loan?

A. That's right.

Q. And that's something you wanted to do; correct?

A. A-ha.

Q. You wanted to stay on as Managing

1 Jerry L. Wallace

2 Member?

3 A. A-ha.

4 Q. And you wanted to extend the time
5 period to repay the loan?

6 A. Yes. And I was still making
7 payments.

8 Q. And you spoke to Samsara about
9 that?

10 A. Yes.

11 Q. That was the understanding you had
12 as of February 27, 2007?

13 A. Correct.

14 Q. And the understanding as of that
15 date was that you would stay on as Managing
16 Member; correct?

17 A. Yes.

18 Q. And that was Managing Member of the
19 Shores of Paradise?

20 A. That's correct.

21 Q. And Exhibit 26, you'll see, is a
22 March 6, 2007, e-mail -- I'm sorry, letter
23 from Samsara Investments to you. Bates mark
24 on this document is SAM 4911 to 4912.

25 (Plaintiff's Exhibit 26, Document

1 Jerry L. Wallace

2 Bates stamped SAM 4911 to 4912, marked for
3 identification.)

4 Q. I ask that you review that
5 document. Let me know when you have.

6 (Witness reviews document.)

7 A. Okay.

8 Q. I want to direct your attention to
9 the first paragraph. It says: "Dear Jerry,
10 Samsara Investments III, LLC, a Delaware
11 Limited Liability Company (the 'Company') is
12 in receipt of your letter dated February 27,
13 2007."

14 That's Exhibit 25 we just looked
15 at; correct?

16 A. 26.

17 Q. 25 is the letter that Mr. Shah
18 references in Exhibit 26; correct?

19 A. Yes.

20 Q. It says -- it continues: "After
21 consideration of your offer, the Company would
22 like to make the following counteroffer in
23 exchange for granting Shores of Paradise, LLC,
24 a Mississippi Limited Liability Company (the
25 'Obligor') an extension to pay the Company all

1 Jerry L. Wallace

2 sums due under the Amended and Restated
3 Operating Agreement of the obligor dated
4 February 24, 2006, and your Principal Guaranty
5 dated February 24, 2006."

6 Do you see that?

7 A. Yes.

8 Q. I want to direct your attention to
9 Point 1. It says: "The Company" -- that is
10 Samsara -- "will delay the election to become
11 the Managing Member under the Operating
12 Agreement until July 30, 2007."

13 A. Yes.

14 Q. That was your understanding as of
15 this date, March 6, 2007; correct?

16 A. Yes.

17 Q. It was your understanding that
18 Samsara would not become the Managing Member;
19 correct?

20 A. That's right.

21 Q. And that you would continue on as
22 the Managing Member?

23 A. Right.

24 Q. You would continue on until at
25 least July 30, 2007?

1 Jerry L. Wallace

2 A. Correct.

3 Q. That was something you agreed to?

4 A. Yes.

5 Q. That was something you acted in
6 accordance with?

7 A. Yes.

8 Q. You continued to make decisions for
9 Shores of Paradise during that period;
10 correct?

11 A. Say that again.

12 Q. You continued to act as the
13 Managing Member during that period; correct?

14 A. Yes.

15 Q. I'm going to show you Exhibit 27.

16 (Plaintiff's Exhibit 27, Multi-page
17 document Bates stamped D 64 through D 79,
18 marked for identification.)

19 Q. Exhibit 27 is a multi-page document
20 produced by you, D 64 through D 79. It
21 attaches a Summons and Complaints by the Wink
22 Companies, LLC, with respect to the Shores of
23 Paradise.

24 What was the Wink Companies?

25 A. I don't know.

1 Jerry L. Wallace

2 keep up with all the reservations and sales of
3 the Shores of Paradise.

4 Q. Now, Mr. Wallace, I have a number
5 of documents here I will represent to you
6 referencing actions you were taking with
7 respect to the Shores of Paradise project
8 between April 1, 2007, all the way through
9 June 2007.

10 My question is: During that period
11 of time you continued to act as the Managing
12 Member of Shores of Paradise; correct?

13 A. Yes.

14 Q. At that point in time, Samsara was
15 not the Managing Member; correct?

16 A. That's correct.

17 Q. You didn't ask them to be the
18 Managing Member during that period; correct?

19 A. Not during that period.

20 MR. PRESSMENT: Off the record.

21 (Discussion off the record.)

22 MR. PRESSMENT: Why don't we take
23 a five-minute break.

24 (Recess taken.)

25 MR. PRESSMENT: Back on the

1 Jerry L. Wallace

2 record.

3 (Plaintiff's Exhibit 28, Two-page
4 document Bates stamped SAM 3765 through
5 3766, marked for identification.)

6 Q. Mr. Wallace, I'm handing you what
7 has been marked as Exhibit 28 for this
8 deposition. It's a two-page document Bates
9 marked SAM 3765 through 3766.

10 I want to direct your attention
11 first to the e-mail from you, Jerry Wallace,
12 to Sachin Shah, at the bottom of the page,
13 continuing to Page 2, dated May 18, 2007. If
14 you turn the page you'll see the date. The
15 subject of that e-mail is "payoff," and you
16 write: "Would your group take \$9 million if
17 paid off in full by July 1st?"

18 Do you see that?

19 A. A-ha.

20 Q. Do you recall writing that to
21 Mr. Shah?

22 A. Yeah, I think so.

23 Q. Mr. Wallace, was it your
24 understanding as of this date, May 2007, that
25 in connection with this transaction, Samsara

1 Jerry L. Wallace
2 made an initial investment of \$6 million,
3 which, pursuant to the Operating and
4 Investment Agreements and the Guaranty, they
5 were to get a return of 10.2 million by
6 February 26, 2007?

7 A. Yes.

8 Q. That was your understanding as to
9 the agreement?

10 A. Yes.

11 Q. Is that your understanding today as
12 to the agreement?

13 A. Yes.

14 Q. And Samsara made that \$6 million;
15 correct?

16 A. They did what?

17 Q. They made that investment of \$6
18 million; correct?

19 A. Yes.

20 Q. And it is your understanding, and
21 you would agree with me, that pursuant to the
22 terms of your agreement with Samsara, Samsara
23 is entitled to a return of \$10.2 million on
24 that initial investment plus interest;
25 correct?

1 Jerry L. Wallace

2 A. Yes.

3 Q. And Samsara hasn't been paid a dime
4 towards that \$10.2 million plus interest that
5 they're owed; correct?

6 A. That's correct.

7 Q. And you do not contest the fact
8 that Samsara is owed that money; correct?

9 A. No.

10 Q. The only thing you contend is that
11 you may not have the funds to be able to pay
12 them back; correct?

13 A. That's a fact.

14 Q. But that's the only thing. You
15 don't contest the fact that Samsara is owed
16 that money; correct?

17 A. I don't contest that they're owed
18 the money.

19 Q. And with respect to your role as
20 Managing Member of Shores of Paradise, we
21 established that continued until at least July
22 or August of 2007; correct?

23 A. That's correct.

24 Q. And actually, it continued past
25 that, didn't it?

1 Jerry L. Wallace

2 A. Well, yeah, out of necessity.

3 Q. Well, in fact, you agreed that you
4 would stay on as Managing Member of Shores of
5 Paradise?

6 A. I don't remember exactly when my
7 last payment was with Kennedy. If I knew the
8 date I could answer your question better. If
9 I knew the date that he made his payment.

10 From that point on I needed to come
11 in there and give me help. It would minimize
12 -- it could have minimized our losses.

13 Q. In terms of your agreement with
14 Samsara, you were in agreement that you would
15 stay on as Managing Member of Shores of
16 Paradise through at least July or August of
17 2007?

18 A. That's correct.

19 Q. And you acted in accordance with
20 that agreement; correct?

21 A. Yes.

22 Q. And you didn't expect Samsara to
23 assume the role of Managing Member?

24 A. Not during that period, no.

25 Q. I want to direct your attention to

1 Jerry L. Wallace

2 this document. It is a tax return form for
3 the year 2006. You signed that first page on
4 behalf of Shores of Paradise, LLC, on or about
5 August 15, 2007; correct?

6 (Plaintiff's Exhibit 29, 2006 IRS
7 Form 8879-PE, marked for identification.)

8 A. That's correct.

9 Q. As of that time, you were
10 continuing to serve as the Managing Member of
11 the Shores of Paradise, LLC; correct?

12 A. A-ha.

13 Q. You do not contend it was Samsara's
14 responsibility at that time to be the Managing
15 Member; correct?

16 A. Not at that time.

17 Q. Has Samsara filed a tax return for
18 the year 2007?

19 A. I have no idea.

20 Q. Do you know if it filed an
21 extension for the tax return for 2007?

22 A. I don't know.

23 Q. Who would know that?

24 A. I don't know who would know that.

25 First of all, I don't have any money to pay an

1 Jerry L. Wallace

2 sitting there to just ignore it. It wasn't
3 like I shut the door and walked out.

4 Q. There's no agreement -- I guess my
5 question is this, Mr. Wallace, for clarity:

6 There's no piece of paper or
7 agreement you can point to where you
8 relinquish the role of Managing Member of
9 Shores of Paradise?

10 A. No piece of paper, no.

11 Q. And certainly at least through
12 August of 2007 you were continuing to act as
13 the Managing Member; correct?

14 A. That's correct.

15 Q. And this lawsuit was filed in
16 October of 2007; correct?

17 A. I don't know.

18 Q. Direct your attention to Exhibit
19 31, which is a copy of the Complaint filed in
20 this action.

21 This lawsuit was filed on or about
22 October 19, 2007; correct?

23 (Plaintiff's Exhibit 31, Copy of
24 Complaint, marked for identification.)

25 A. It's either a 10 or 19. I can't tell.

1 Jerry L. Wallace

2 Q. Directing your attention to the last
3 page. October 19 --

4 A. Okay, yeah.

5 Q. -- 2007.

6 A. Yeah, okay.

7 Q. Does that refresh your recollection
8 that this lawsuit was filed on or about
9 October 19, 2007?

10 A. Yes. Yes. Yes, it does.

11 Q. Do you recall whether or not at the
12 time you received this lawsuit you were taking
13 any actions as Managing Member of Shores of
14 Paradise, LLC?

15 A. I don't recall.

16 Q. But you had not --

17 A. I don't think -- I mean, they had
18 not made any move to come in to do any
19 management.

20 Q. And you had not relinquished your
21 role --

22 A. I mean, like I say, you couldn't
23 just shut the door and walk away.

24 Q. In answer to my question, as of the
25 date this Complaint was filed you had not

1 Jerry L. Wallace

2 relinquished your role as the Managing Member
3 of Shores of Paradise, LLC; correct?

4 A. Not in writing. What I was trying
5 to do was to avoid this lawsuit.

6 Q. But you had no agreement with
7 Samsara --

8 A. No agreement, no.

9 Q. Let me complete my question.

10 As of the date this lawsuit was
11 filed, you had no agreement with Samsara for
12 Samsara to assume the role of Managing Member?

13 A. No. Right, no.

14 Q. And referring back to Exhibit 6,
15 then. I want to direct your attention to your
16 Counterclaims in this action. And the first
17 Counterclaim, directing your attention to the
18 same paragraph we looked at this morning,
19 Paragraph 21, are you able to state here with
20 any specificity any actions that Samsara
21 failed to take that it should have or was
22 obligated to pursuant to any agreement you had
23 with them as a Managing Member?

24 A. I would have to say yes, that they
25 did not do what, in my opinion, would be the

1 Jerry L. Wallace

2 thing to do in their position.

3 Q. That was a business perspective,
4 though; correct, sir?

5 A. Not really.

6 Q. Well, to your knowledge, just to
7 clarify in light of what you testified,
8 Samsara was not bound or legally obligated
9 pursuant to any agreement you know of --

10 A. Yeah, they were legally obligated.
11 They chose to forebear on that agreement.

12 Q. And you agreed to forebear, yes?

13 A. I agreed to that, but whenever I
14 ran out of being able to make the payments
15 then I could not do anything else.

16 Q. And you can't tell us whether or
17 not that was before or after the Complaint --

18 A. All you have to do is tell me when
19 he made his payment.

20 Q. Quite frankly, I don't know, sir.
21 The question is: As you sit here today, you
22 can't tell me whether or not you requested
23 that Samsara assume the role of Managing
24 Member before the Complaint was filed in this
25 case?

1 Jerry L. Wallace

2 A. I have to say that I was begging
3 for help.

4 Q. Help?

5 A. Please help.

6 Q. Sure. Mr. Wallace, understand that
7 I'm asking specific questions about the claim
8 being a Managing Member.

9 A. I understand.

10 Q. As of the date of the Complaint,
11 October 19, 2007, you can't tell me today that
12 you were not still the Managing Member of
13 Shores of Paradise; correct?

14 A. No. Because they had not stepped
15 in to do that.

16 Q. So as of that date you were still
17 acting as the Managing Member of Shores of
18 Paradise; correct?

19 A. Yes.

20 Q. And that was something you agreed
21 to do?

22 A. That was something I had to do. I
23 had no choice.

24 Q. And you agreed to do that in your
25 communications with Samsara; correct?

1 Jerry L. Wallace

2 A. I had no choice.

3 Q. Sir, my question was: That was
4 something you agreed to do; correct?

5 A. Yes.

6 MR. PRESSMENT: I am going to look
7 over just the documents you gave me to copy
8 and make sure. If there's nothing I haven't
9 seen before I will be ready to finish up.
10 Give me a few moments. We'll go off the
11 record.

12 Just note for the record that
13 Mr. Wallace has produced to me today a pile of
14 documents that he represents is part of his
15 file regarding the Shores of Paradise project.

16 So the documents I'm referring to
17 now are those documents. I will take a few
18 moments to review them, and if anything I need
19 to follow up on on those documents appears to
20 me, I will do so shortly after the break.

21 A. Okay.

22 (Recess taken.)

23 Q. I'm going to direct your attention
24 to Exhibit 32.

25 (Plaintiff's Exhibit 32, Multi-page

C E R T I F I C A T E

STATE OF NEW YORK)

: ss.

COUNTY OF NEW YORK)

I, FRANCINE SKY, a Shorthand
Reporter and Notary Public within and for
the State of New York, do hereby certify:

That JERRY L. WALLACE, the witness
whose deposition is hereinbefore set forth,
was duly sworn by me and that such
deposition is a true record of the
testimony given by the witness.

I further certify that I am not
related to any of the parties to this action
by blood or marriage, and that I am in no
way interested in the outcome of this
matter.

IN WITNESS WHEREOF, I have hereunto
set my hand this 23rd day of May, 2008.



FRANCINE SKY